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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,796	09/18/2003	Yen-Fu Chen	AUS920030302US1	9021

35525 7590 07/17/2007	**EXAMINER**
IBM CORP (YA)	MISIASZEK, MICHAEL
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ART UNIT	PAPER NUMBER
3625	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/666,796	CHEN ET AL.
	Examiner	Art Unit	
	Michael Misiaszek	3625	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>01 May 2007</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12,14-19,21-25 and 27-30* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12,14-19,21-25 and 27-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 7/7/7

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

5/1/2007 has been entered.

Response to Amendment

Applicant's amendments filed 5/1/2007 have been received and reviewed. The status

of the claims is as follows:

Claims 1-12, 14-19, 21-25, and 27-30 are pending.

Claim Objections

Claim 14 is objected to because of the following informalities: it is recited as

being dependent on claim 13, which has been cancelled. Appropriate correction is

required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. **Claims 1, 2, 4-7, 9, 10-12, 14, 15, 16, 18-19, 21, 22, 24-25, and 29-30 are**

rejected under 35 U.S.C. 103(a) as being unpatentable over Mikurak in view of

Fraenkel and Brown.

Regarding Claims 1, 15, 21, 29

Mikurak discloses a method and system for a utility computing environment comprising:

- setting service level thresholds for the utility computing environment, wherein the

  service level thresholds are based on a service level agreement with a customer

  (at least column 44, lines 62-67 and column 45, lines1-8: thresholds set with

  SLA)

- identifying at least one discrepancy between the promised service level and the

  current service level (at least column 44, lines 62-67 and column 45, lines1-8:

  performance goals tracked, notifications generated when not met)

- providing a rebate to the customer for the at least one discrepancy (at least

  column 47, lines 9-19: rebates given for SLA breaches)

Mikurak does not disclose:

- displaying a view of a current service level for the customer

- presenting a view of a promised service level based on service level agreement

  parameters

- wherein the rebate assures that the customer pays for services rendered,

  wherein the rebate is generated for guaranteed uniformity, wherein guaranteed

  uniformity is the process of crediting the customer when successfully completing

  a service request using less time and resources than specified in the service

  level agreement

Fraenkel teaches that it is known to include presenting and displaying a view of

service level (at least figure 14) in a similar environment. It would have been obvious

to one of ordinary skill in the art at the time the invention was made to have modified the

method and system, as taught by Mikurak, with the presenting and displaying any

service level, as taught by Fraenkel, since such a modification would have provided

increased accuracy in monitoring resource performance and determining performance

problems through a software system that monitors post-deployment operations of

systems (at least paragraph [0011] of Fraenkel).

Brown teaches that it is known to include generating a rebate to credit a customer

when completing a service request using less time and resources than specified in a

service agreement (at least paragraph [0065]: utility service terms include rebate for

unutilized capacity) ion a similar environment. It would have been obvious to one of

ordinary skill in the art at the time the invention was made to have modified the method

and system, as taught by Mikurak, with the rebating for unutilized resources, as taught

by Fraenkel, since such a modification would have provided increased accuracy in

charging customers for utility usage (at least paragraph [0065] of Brown).

The examiner notes that though Brown does not explicitly disclose rebating for

unused time, these differences are only found in the nonfunctional descriptive material

and are not functionally involved in the steps recited. The step of providing a rebate

would be performed in the same manner regardless of what discrepancy is credited. In

other words, whether less time or any other resource is used than is set forth in the

claimed service level agreement, the rebate is still provided in the same manner, to

ensure that a customer pays only for services rendered   Thus, this descriptive material

will not distinguish the claimed invention from the prior art in terms of patentability, see

In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*,

32 F.23d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a rebate for an service level agreement discrepancy because the type of discrepancy does not functionally relate to the steps in the method claimed and merely rebating an unused resource different from that in the prior art would have been obvious. See *Gulack* cited above.

Regarding Claims 2, 4-7, 9, 16, 22

Mikurak discloses:

- the service level agreement parameters include at least one of a duration, a transaction, a configuration, and a threshold (at least column 44, lines 62-67 and column 45, lines1-8: thresholds set with SLA)

- the service level thresholds are used to generate a warning prior to the occurrence of the at least one discrepancy (at least column 73, lines 54-67: alarms from proactive threshold manager)

- the discrepancy is identified by at least one of breaching the service level agreement, exceeding the service level agreement parameters, and completing a service request prior to a promised service level completion time (at least column 44, lines 62-67 and column 45, lines1-8: performance goals tracked, notifications generated when not met, i.e., exceeding thresholds)

- the service level thresholds are set for at least one of a customer, a service provider, and a utility computing host (at least column 44, lines 62-67 and column 45, lines1-8: thresholds set with SLA for customer)

- alerting the at least one of the customer, the service provider, and the utility computing host of the at least one discrepancy and a root cause for the at least one discrepancy (at least column 74, lines 1-18: notification events generated based on hardware failures/problems)

Mikurak does not disclose:

- the view of a current service level is at least one of a real-time view and a

  historical view

Fraenkel teaches that it is known to include a real-time or historical view of service

level (at least figure 14: views of service level) in a similar environment. It would have

been obvious to one of ordinary skill in the art at the time the invention was made to

have modified the method and system, as taught by Mikurak, with the real-time or

historical view of service level, as taught by Fraenkel, since such a modification would

have provided increased accuracy in monitoring resource performance and determining

performance problems through a software system that monitors post-deployment

operations of systems (at least paragraph [0011] of Fraenkel).

Regarding Claims 10, 18, 24, 30

Mikurak discloses:

- presenting a promised service level based on a service level agreement (at least

    column 46, lines 1-9: customer reports generated of SLA parameters)

- providing a rebate to a customer when at least one discrepancy between the

    current service level and the promised service level occurs (at least column 47,

    lines 9-19: rebates given for SLA breaches)

Mikurak does not disclose:

- displaying at least one of an infrastructure view and an application view of a

    current service level for a customer, wherein the infrastructure view contains

    information technology hardware and software components, wherein the

    application view contains software applications residing on utility computing

    resources, and wherein the infrastructure view and the application view are

    linked

- retrieving additional details of the at least one of the infrastructure view and the

    application view by clicking on a component of the at least one of the

    infrastructure view and the application view

- switching between the infrastructure view and the application view

- wherein the infrastructure view and the application view show a relationship

    between the current service level and the promised service level and wherein the

relationship indicates a progress level of a service request with respect to a

service level agreement with a customer

The examiner notes that though Brown does not explicitly disclose rebating for

unused time, these differences are only found in the nonfunctional descriptive material

and are not functionally involved in the steps recited. The step of providing a rebate

would be performed in the same manner regardless of what discrepancy is credited. In

other words, whether less time or any other resource is used than is set forth in the

claimed service level agreement, the rebate is still provided in the same manner, to

ensure that a customer pays only for services rendered   Thus, this descriptive material

will not distinguish the claimed invention from the prior art in terms of patentability, see

In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*,

32 F.23d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to provide a rebate for an service level agreement discrepancy

because the type of discrepancy does not functionally relate to the steps in the method

claimed and merely rebating an unused resource different from that in the prior art

would have been obvious. See *Gulack* cited above.

Fraenkel teaches that it is known to include an infrastructure view containing

information technology hardware and software components (at least figure 29: server

and memory performance and software performance displayed) and an application view

containing software applications (at least figure 22: software (transaction performance

displayed), linking the views (at least figures 22, 29: pages linked by menu on left side),

retrieving additional details with a mouse click (at least figures 22, 29: date menus at

top can be clicked to retrieve additional details), and switching between views (at least

figures 22, 29: views switched between via menu on left side) in a similar environment.

It would have been obvious to one of ordinary skill in the art at the time the invention

was made to have modified the system and method, as taught by Mikurak, with the

infrastructure view and application view, and their functionalities, as taught by Fraenkel,

since such a modification would have provided increased accuracy in monitoring

resource performance and determining performance problems through a software

system that monitors post-deployment operations of systems (at least paragraph [0011]

of Fraenkel).

Brown teaches that it is known to include presented a view of a relationship between a promised service level and a current service level (at least figure 6A: allocated utility capacity and actual utility usage) and generating a rebate to credit a customer when completing a service request using less time and resources than specified in a service agreement (at least paragraph [0065]: utility service terms include rebate for unutilized capacity) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system and method, as taught by Mikurak, with the display of a relationship of service levels and rebates, as taught by Brown, since such a modification would have provided an improved utility management for customers through an interface that allows a user to identify activities that result in utility overuse (at least paragraph [0089] of Brown).

Regarding Claims 11-12, 14, 19, 25, 27

Mikurak discloses:

- alerting at least one of a customer, a service provider, and a utility computing host of a discrepancy between the current service level and the promised service level (at least column 44, lines 62-67 and column 45, lines1-8: performance goals tracked, notifications generated when not met)

- the at least one discrepancy is based on at least one of exceeding a service level agreement parameter, breaching a service level agreement, and completing a service request prior to a promised service level completion time (at least column 44, lines 62-67 and column 45, lines1-8: performance goals tracked, notifications generated when not met, i.e., exceeding thresholds)

Mikurak does not disclose:

- a view of the current service level includes at least one of a warning, an alert, a breach, a duration, a transaction, a configuration, a threshold, a rebate, a utility computing resource, a consumed computer resource, and a consumed human resource

- wherein the rebate assures that the customer pays for services rendered, wherein the rebate is generated for guaranteed uniformity, wherein guaranteed uniformity is the process of crediting the customer when successfully completing a service request using less time and resources than specified in the service level agreement

- wherein the relationship shows a severity level for the discrepancy

Fraenkel teaches that it is known for the view of a service level to include a transaction (at least figure 14: transactions displayed) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method and system, as taught by Mikurak, with the inclusion of a transaction in a service level view, since such a modification would have provided increased accuracy in monitoring resource performance and determining performance problems through a software system that monitors post-deployment operations of systems (at least paragraph [0011] of Fraenkel).

Brown teaches that it is known to include and to show severity level of a discrepancy (at least figure 6B: utility margins show level of difference between allocated and used utility capacity) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method and system, as taught by Mikurak, with the indicating severity of discrepancies, as taught by Brown, since such a modification would have provided increased accuracy in charging customers for utility usage (at least paragraph [0065] of Brown).

2.   **Claims 3, 8, 17, and 23 are rejected under 35 U.S.C. 103(a) as being**

unpatentable over Mikurak in view of Fraenkel and Brown, as applied to claims 1,

15, and 21 above, and further in view of Steele.

The combination of Mikurak, Brown and Fraenkel discloses the claimed invention

except for:

- modifying the service level thresholds using a graphical user interface

- providing an option to customize the view of the current service level and the

  view of the promised service level

Steele teaches that it is known to include modifying service level thresholds using a

graphical user interface (at least paragraph [0031]: user enters SLA parameters in

window) and providing an option to customize a view associating with a service level (at

least claim 18: SLA window can be customized) in a similar environment. It would have

been obvious to one of ordinary skill in the art at the time the invention was made to

have modified the method and system, as taught by Mikurak, Brown and Fraenkel, with

the modifying service level thresholds and customizing views, as taught by Steele, since

such a modification would have provided a means to create service level agreements

efficiently without requiring a network administrator to approve each customer's

agreement (at least paragraph [0004] of Steele).

3.   Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Mikurak in view of Fraenkel and Brown, as applied to claims 1, 15, and 21 above,

and further in view of Vukovljak.

The combination of Mikurak, Fraenel, and Brown discloses the claimed invention except

for:

- a severity level indicator comprises a red light, yellow light and green light on a

    traffic light

Vukovljak teaches that it is known to include traffic light indicators for service level

data (at least paragraph [0100]) in a similar environment. It would have been obvious to

one of ordinary skill in the art at the time the invention was made to have modified the

method and system, as taught by Mikurak, Fraenkel, and Brown, with the traffic light

indicators, as taught by Vukovljak, since such a modification would have provided

increased robustness and scalability in enterprise management through realtime testing

and reporting of service levels (at least paragraph [0010] of Vukovljak).

Response to Arguments

Applicant has provided no arguments to the patentability of the claimed invention in the response filed 5/1/2007. Instead, applicant has merely request reconsideration of the newly amended claims. Accordingly, the Examiner directs the applicant to the rejections above, which have taken into consideration the claim amendments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Misiaszek whose telephone number is (571) 272-6961. The examiner can normally be reached on 8:00 AM - 4:30 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571) 272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael A. Misiaszek
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7/7/2007

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